

UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Luke D. Ratcliff *Docket No.:* 3040 *Art Unit:* 3662

In re:

Applicant: Uwe SKULTETY-BETZ

Serial No.: 10/502,411

Filed: July 23, 2004

REPLY BRIEF

Commissioner for Patents
P O Box 1450
Alexandria, VA 22313-1450

January 15, 2008

Sir:

This Reply Brief is submitted in response to the Examiner's Answer
of November 16, 2007.

The Examiner rejected some claims, and in particular claim 11, under 35 U.S.C. 102(b) as being anticipated by the U.S. patent to Dunne.

Concerning the Examiner's argumentation under point 10, in the second paragraph on page 6, it is noted that the Examiner indicated that "the purpose of the housing as taught by Dunne is to enclose the electronics including the position sensor, a signal transducer, and the laser".

Applicants have to respectfully disagree with reference made by the Examiner to the patent to Dumme because in the applicant's opinion the interpretation of the wording "housing" is not justified.

First of all, the purpose of a housing is generally known, so that a person skilled in the art does not have to consider the teaching of the patent to Dunne in order to interpret the term "housing". A housing serves basically to enclose some internal elements, which have to be protected from external influences. Therefore, it is clear that a housing is configured in such a way that it can not be separated into pieces by an end user, since the protective function of the housing could be lost. In the specific case of the patent to Dunne, the person skilled in the art would recognize that the system shown in Figures 1-3 and shortly described in the abstract of this reference does have two housings, namely a first housing for the measuring module and a second housing for the

compass module, which is separable from the measuring module.

Even in the case that a person skilled in the art studied the teaching of the patent to Dunne in order to interpret the wording "housing", he would not be led to interpret the system shown in the figure as being made of only one housing. In the specification of the patent to Dunne, it is explicitly described that the laser module 12 has a housing 20 (column 5, line 7) and that the compass module 14 includes a housing 52 (column 6, lines 42-44). In column 7, second paragraph, it is described in detail how the compass module 14 is designed to be removably attached to the laser module 12, showing how the two housings 20 and 54 are separable from each other.

It is believed to be clear that the patent to Dunne does not disclose a measuring device with a laser, a position sensor, and a signal transducer being enclosed in a common housing, as defined in claim 11.

Claim 11 was rejected by the Examiner as being anticipated by the patent to Dunne. In connection with this, it is believed to be advisable to cite the decision *in re Lindenman Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention,

arranged as in the claim."

Definitely, the patent to Dunne does not disclose each and every element of the present invention defined in claim 11, as explained herein above.

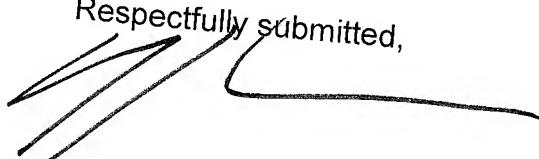
Therefore, the Examiner's anticipation rejection of claim 11 based on this reference should be considered as not tenable and should be withdrawn.

Claim 11 should be considered as patentably distinguishing over the art and should be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

A handwritten signature consisting of a stylized 'M' and a long, sweeping line extending to the right.

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